IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

WEDNESDAY, THE 14TH NOVEMBER 2007 / 23RD KARTHIKA 1929

Bail Appl..No. 6912 of 2007()

CRIME NO.90/05 OF PAZHAYANNOOR POLICE STATION

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PETITIONER/13TH ACCUSED

JAYA @ JAYAPRAKASH,
AGED 21 YEARS, S/O. NARAYANAN
KARUTHODY HOUSE, METRA DESOM, OTTAPPALAM VILLAGE
OTTAPALAM.

BY ADV. SRI.S.RAJEEV

RESPONDENTS: STATE

STATE OF KERALA
REP. BY PUBLIC PROSECUTOR
HIGH COURT OF KERALA ERNAKULAM
(CRIME NO. 90 OF 2005 OF PAZHAYANNOOR POLICE STATION)

BY PUBLIC PROSECUTOR SRI. GIKKU JACOB

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 14/11/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

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B.A.No. 6912 of 2007

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Dated this the 14th day of November, 2007

O R D E R

Application for anticipatory bail. The petitioner faces allegations under Section 302 I.P.C. The investigation is now complete. Final report has already been filed. Petitioner is arrayed in the final report as the 13th accused. Cognizance has been taken by the learned Magistrate. Committal proceedings has been registered also. The petitioner was not arrested at the crime stage. He apprehends arrest.

2. The learned Prosecutor, in these circumstances, opposes the application for anticipatory bail. He submits that it is for the petitioner now to appear before the learned Magistrate in the pending committal proceedings and seek regular bail. There is absolutely no justification in the prayer for grant of anticipatory bail to the petitioner. He may be directed to resort to the ordinary and normal procedure of appearing before the Investigating Officer or the learned Magistrate and then seek regular bail.

3. It is trite after the decision in **Bharat Chaudhary** v. **State of Bihar** (AIR 2003 SC 4662) that powers under Section 438 Cr.P.C. can be invoked even in favour of a petitioner, who apprehends arrest in the pending case on the strength of a non-bailable warrant issued by the court. Even that is not by itself sufficient to justify the invocation of the jurisdiction under Section 438 Cr.P.C. I am unable to find any compelling reasons which would justify invocation of the jurisdiction under Section 438 Cr.P.C.

6. It is certainly for the petitioner to appear before the learned Magistrate and explain to the learned Magistrate the circumstances under which he could not earlier appear before the learned Magistrate. I have no reason to assume that the learned Magistrate would not consider the application for bail to be filed by the petitioner when he surrenders before the learned Magistrate, on merits, in accordance with law and expeditiously. Every court must do the same. No special or specific direction appears to be necessary. Sufficient general directions have already been issued by this Court in the decision in **Alice George** v. **Dy.S.P. of Police** (2003 (1) KLT 339).

7. This application is accordingly dismissed. I may however hasten to observe that if the petitioner appears before the learned Magistrate in the committal proceedings and applies for regular bail after giving sufficient prior notice to the Prosecutor in charge of the case, the learned Magistrate must proceed to pass orders on merits, in accordance with law and expeditiously - on the date of surrender itself.

(R. BASANT)
Judge

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